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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 131

UNITED STATES OF AMERICA,

Petitioner,

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, et al.

MEMORANDUM OF LOCAL 807 ET AL. IN OPPOSITION TO THE APPLICATION OF THE UNITED STATES OF AMERICA FOR A WRIT OF CERTIORARI

LOUIS B. BOUDIN,
EDWARD C. MAGUIRE,
JAMES D. C. MURRAY,
of Counsel for ~~Petitioners~~ Respondents.

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Local 807 and the other defendants in the above-entitled criminal prosecution feel constrained to oppose the petition of the Government for a writ of certiorari to review the decision of the Circuit Court of Appeals, notwithstanding their own petition for a writ of certiorari to review that decision, because of the formulation by the Government in its petition of the question to be presented to this Court.

As stated in the petition the question to be presented by the Government is—

> "Whether payments made by truck operators to individual members of a labor union to secure 'protection' against violent interference with the operation of their trucks constitute 'the payment of wages by a bona fide employer to a bona fide employee' within the meaning of Section 2 (a) of the Anti-Racketeering Act simply because those exacting such payments make a proffer of services which they are qualified to render."

We respectfully submit that no such question is presented by the record; and it would embarrass counsel for the defendants (petitioners in No. 132) to have to argue that question, instead of concentrating their attention to the questions actually presented by the record in the case. There is no reason why counsel for Local 807, or its officers and members, should be called upon to argue the abstract proposition stated above, and it would be a great burden upon them to have to do so. Also, the necessity to do so would, in our opinion, seriously hamper the discussion of the real questions presented by this case,—namely, whether or not the so-called Anti-Racketeering Act is applicable to *labor unions*, or their officers and members, for acts done in connection with a labor dispute which resulted from a policy adopted by the union in pursuance to its belief as to what is a proper labor union policy in the circumstances.

That that is the real question involved in this case, and not the imaginary one formulated in the Government's petition, clearly appears from the fact that the Government has not limited its petition for review to the case of the individual defendants, but has included in its petition the defendant Local 807. And a reading of the opinions of the Court below clearly demonstrates that the abstract question of individuals demanding payment and offering services, disconnected from a labor union policy

in a labor dispute, was not passed upon by the Court below, and does not, therefore, call for review by this Court.

It seems to us that every legitimate question appearing on the record in this case, and every question of public importance in the administration of the Anti-Racketeering Act,—at least as shown by the use so far made of it by the Government,—can be argued if the petition filed by these defendants be granted; and that the granting of the Government's petition would only embarrass that argument.

Dated: New York, June 24, 1941.

Respectfully submitted,

Louis B. Boudin,
Edward C. Maguire,
James D. C. Murray,
of Counsel for Petitioners.